IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 616 of 2000

For Approval and Signature:

HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MURLIDHAR LALCHAND T LAKHANI

Versus

EMPIRE HOTEL & RESORTS LIMITED

Appearance:

1. Civil Revision Application No. 616 of 2000

MR DN PANDYA for Petitioner No. 1-2

MR MB GANDHI for Petitioner No. 1,2

MRS TRUSHA M GANDHI for Petitioner No. 1,2

MR MC BHATT for Respondent No. 1

MR DM BHATT for Respondent No. 1

RULE SERVED for Respondent No. 2/1-2/5

CORAM : HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 08/07/2004

ORAL JUDGEMENT

1. Heard learned Advocate Mr. M.B. Gandhi for the petitioners while learned Advocate for the respondent is not present.

2. This is a Revision Application filed against an order passed by Small Causes Court, Ahmedabad, in HRP Suit No. 1489 of 1990 below an Application Exh. 134 on 20th of April, 2000.

3. Present petitioners - original defendant Nos. 2 and 3 of above HRP Suit No.1489 of 1990 filed Application at Exh. 134 stating that the suit came to be filed by the plaintiff against Mohanlal Shankerlal also along with defendant Nos. 2 and 3 on 29th of June, 1990 stating that defendant Mohanlal Shankerlal was the main tenant of the suit premises. It was further alleged by the present petitioners - original defendant Nos.2 and 3 vide Application Exh.134 that main defendant Mohanlal Shankerlal had died on 27th of December, 1989 at village Ahandalaj, Taluka Sidhpur, District Mehsana, even then, the plaintiff had filed a suit against a party, who was dead before filing of the suit. It was further stated in the application that since the suit was against dead person, and in this respect Issue No.4 was also framed by the Court, and that issue ought to be heard as preliminary issue whether the suit was maintainable as against dead person. After hearing the parties, learned Small Causes Court Judge, Ahmedabad, came to the conclusion that the legal heirs of deceased Mohanlal Shankerlal were brought to the record as defendant Nos. 1/1 to 1/5 by the plaintiff on 27th February, 1997. Further, it was held by the Trial Judge that hearing the issue of maintainability of the suit as a preliminary issue would prolong the disposal of the suit and instead it was in the interest of justice, to hear all the issues together. Therefore, the application filed by the present petitioners at Exh. 134 came to be dismissed by learned Trial Judge vide order impugned in this Revision Application.

4. Firstly, this Revision Application is not maintainable because it is clearly hit by proviso of Section 115 of the Civil Procedure Code and an order in favour of the petitioners would not have disposed of the suit. This Revision Application is not maintainable and secondly there is no substance in this Revision Application on merit as well.

5.. In view of the above, this Revision Application

stands dismissed. Rule is discharged. No order as to costs. Interim relief granted, if any, earlier shall stand vacated.

(J.R. Vora, J.)

p.n.nair